

Feinstein
CGM

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

8988

FILE: B-192110

DATE: January 29, 1979

MATTER OF: [Claim of Security Guard for Backpay]

DIGEST: Security guard was involuntarily removed from patrol duties and assigned to day shift desk duties after medical finding that he was disqualified to carry firearms. Such removal does not constitute unwarranted and unjustified personnel action since it was done pursuant to medical certificate issued by Navy physician. Therefore, employee is not entitled under Back Pay Act, 5 U.S.C. § 5596, to premium pay which he would have earned while on patrol duties during period of assignment to desk duties.

AGC 00161

This is in response to a letter from the Commanding Officer, Navy Regional Finance Center, requesting an advance decision on the claim of a civilian armed security guard at the Annapolis Laboratory of the David W. Taylor Naval Ship Research and Development Center, Bethesda, Maryland, for certain premium pay and differentials which he claims were lost as the result of his temporary reassignment for medical reasons from duties which required his possession of a firearm to a desk assignment.

D & G
~~00322~~
00325

The guard was hospitalized for treatment of acute pancreatitis and returned to work on July 25, 1975. At that time, he was examined by a Navy physician at the Naval Academy Hospital which provides all medical services for the laboratory. The physician found him disqualified to carry firearms and, as a result of this finding the guard's supervisor immediately relieved him of his normal shift assignments which required wearing firearms and assigned him to a desk job on the Monday through Friday shift schedule. On October 6, 1975, the guard was examined by a Navy psychiatrist and was found fully qualified for his guard position, including use of firearms. On October 22, 1975, the guard was reissued his weapon and reassigned to his former duties. He is seeking backpay for the premium pay he claims he would have earned had he not been placed on a restricted work schedule from July 25 to October 22, 1975.

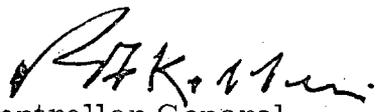
dec

~~003367~~

B-192110

We have long held that an employee may be placed on involuntary leave or reassigned on the basis of competent medical findings that the employee is incapacitated for the performance of his or her assigned duties. See 41 Comp. Gen. 774 (1962); B-167317, September 5, 1969; B-181313, February 7, 1975. However, the Back Pay Act, 5 U.S.C. § 5596 (1976), allows recovery of backpay, including premium pay, if that pay was lost through an unjustified or unwarranted personnel action. Section 550.803(e) of title 5, Code of Federal Regulations (1978), provides that a personnel action is unjustified or unwarranted if it is determined by an appropriate authority to be improper or erroneous on the basis of either substantive merit or procedural defects. In this connection we have held that where the medical evidence does not substantiate the adverse action, the adverse action was an unjustified and unwarranted personnel action, and backpay, including premium pay, could be granted under 5 U.S.C. § 5596. B-188125, October 31, 1977. Also see 39 Comp. Gen. 154 (1959).

In the present case the medical evidence was the finding by the Navy physician on July 25, 1975, which stated that the guard was unqualified to carry a firearm. The adverse action of removal from duties which required a firearm and reassignment to a desk assignment was substantiated by the medical certificate. The guard was subsequently examined by a psychiatrist on October 6, 1975, and found to be qualified for carrying a firearm. On the basis of the later finding he was reassigned to his former guard duties. Accordingly, there was no adverse agency action taken that was unsubstantiated by medical evidence and, thus, backpay may not be granted under 5 U.S.C. § 5596. Accordingly, the guard is not entitled to receive the premium pay and shift differentials that he lost during the period he was assigned to desk duty.


Deputy Comptroller General
of the United States